



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 205

RIN 1901-AB50

Administrative Updates to Personnel References

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response, U.S.

Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (“DOE”) publishes this final rule to update personnel references to correspond with the Secretary’s delegation of authority. This final rule is needed to reflect changes to the Secretary's delegation of authority and does not otherwise substantively change the current regulations.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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I. Background and Summary of Final Rule

The regulations at 10 CFR part 205, subpart W, provide procedural regulations concerning the Secretary of Energy's issuance of an emergency order under the Federal Power Act. These regulations were last updated in January of 2018 (83 FR 1174; Jan. 10, 2018). The Secretary of Energy delegated the authority to review compliance filings, and issue

implementing letters and directives; and take such other actions as are necessary and appropriate to implement and administer an emergency order issued by the Secretary or Deputy Secretary of Energy to the Under Secretary of Energy. *See* DOE Delegation Order No. 00-002.00Q (Nov. 1, 2018). In turn, the Under Secretary of Energy delegated the authority to review compliance filings, and issue implementing letters and directives; and take such other actions as are necessary and appropriate to implement and administer an emergency order issued by the Secretary or Deputy Secretary of Energy to the Assistant Secretary for Cybersecurity, Energy Security, and Emergency Response. *See* DOE Delegation Order No. 00-002.23 (June 4, 2019).

The administrative updates to a personnel reference are needed to conform to the current delegation authority to the Office of Cybersecurity, Energy Security, and Emergency Response. However, it is possible that in the future the Secretary will delegate this authority to another office within DOE. Therefore, this final rule revises DOE regulations at 10 CFR 205.383 by changing a reference to “the Department of Energy’s Office of Electricity Delivery and Energy Reliability” to “the office that is delegated the authority by the Secretary.”

II. Final Rulemaking

In accordance with the Administrative Procedure Act’s provisions at 5 U.S.C. 553(b), DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is “impracticable, unnecessary, or contrary to the public interest.”

For the administrative update discussed in Section 1, DOE finds that providing an opportunity for public comment prior to publication of this rule is not necessary because DOE is

carrying out an administrative change that does not substantively alter the existing 10 CFR part 205 regulatory framework. The actions taken concerning issuance of an emergency order under the Federal Power Act – including the review of compliance filings, issuance of implementing letters and directives, and other necessary actions – are not affected by this regulation recognizing the delegation of authority to take these actions. In addition, delegation of the authorities specified in the regulation has already occurred and may occur again as appropriate. For these reasons, providing an opportunity for notice and comment prior to publication of the rule would serve no purpose. For the same reasons, DOE is waiving the 30-day delay in effective date.

III. Regulatory Review

A. Review Under Executive Order 12866

This final rule has been determined not to be a “significant regulatory action” under section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” That order stated that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The order stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The order required the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of the Information Quality Act, or the guidance issued pursuant to that Act, particularly those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this final rule is consistent with the directives set forth in these Executive orders. This final rule does not substantively change the existing regulations and is

intended only to make personnel references in the regulations at 10 CFR part 903 consistent with the Secretary's delegation of authority.

C. Review Under the National Environmental Policy Act of 1969

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: <http://energy.gov/gc/office-general-counsel>. As discussed above, DOE has determined that prior notice and opportunity for public comment is unnecessary for this final rule. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for this rule.

E. Review Under the Paperwork Reduction Act of 1995

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. No. 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; available at:

https://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

UMRA sections 202 and 205 do not apply to this action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this final rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements:

(1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule or regulation, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 205

Administrative practice and procedure, Energy, Recordkeeping and reporting requirements.

Signed in Washington, DC, on December 23, 2019.

Karen. S. Evans,
Assistant Secretary, Office of Cybersecurity, Energy
Security, and Emergency Response.

For the reasons stated in the preamble, DOE amends part 205 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 205 – ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions; Grid Security Emergency Orders

1. The authority citation for subpart W of part 205 is revised to read as follows:

Authority: Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101); Pub. L. 66-280, 41 Stat. 1063 (16 U.S.C. Section 792 *et seq.*); E.O. 10485, 18 FR 5397, 3 CFR, 1949-1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136; Department of Energy Delegation Order No. 00-002.00Q (Nov. 1, 2018).

§205.383 [Amended]

2. Section 205.383(a) introductory text is amended by removing the words “the Department of Energy’s Office of Electricity Delivery and Energy Reliability” and adding in their place the words “the office that is delegated the authority by the Secretary”.

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